

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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AUG 16 2000

In the Matter of )

Service Rules for the 746-764 and  
776-794 MHz Bands, and Revisions of  
Part 27 of the Commission's Rules )

WT Docket No. 99-168

Carriage of the Transmissions of Digital  
Television Broadcast Stations )

CS Docket No. 98-120

Review of the Commission's Rules and  
Policies Affecting the Conversion to  
Digital Television )

MM Docket No. 00-83

Joint Comments of the Industrial Telecommunications  
Association, Inc. and Access Spectrum LLC

On June 30, 2000, the Commission released a *Memorandum Opinion and Order and Further Notice of Proposed Rule Making* resolving thirteen outstanding petitions for reconsideration and seeking comment on several aspects of the clearing of the 746-764 and 776-794 MHz bands (hereinafter referred to as the "746-806 MHz bands" or "700 MHz band").<sup>1</sup> The Industrial Telecommunications Association, Inc. (ITA) and Access Spectrum LLC (Access) hereby respectfully submit these comments responsive to the Commission's proposals.

ITA is a Commission-certified frequency advisory committee and coordinates in excess of 6,000 applications per year on behalf of applicants seeking Commission

<sup>1</sup> In the Matter of Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules, Carriage of the Transmissions of Digital Television Broadcast Stations, review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, *Memorandum Opinion and Order and Notice of Proposed Rule Making*, WT Docket No. 99-168, CS Docket No. 98-120, MM Docket No. 00-83, FCC 00-224, released June 30, 2000 (FNPRM).

authority to operate business and industrial/land transportation radio stations on frequency assignments allocated between 30-900 MHz.

ITA enjoys the support of a membership that includes more than 3,500 licensed two-way land mobile radio communications users, private mobile radio service (PMRS) oriented radio dealer organizations, and the following trade associations:

- Alliance of Motion Picture and Television Producers
- Aeronautical Radio, Inc.
- Associated Builders & Contractors, Inc.
- Florida Citrus Processors Association
- Florida Fruit & Vegetable Association
- National Mining Association
- National Propane Gas Association
- National Ready Mixed Concrete Association
- National Utility Contractors Association
- New England Fuel Institute
- United States Telecom Association

In addition, ITA is affiliated with the following independent market councils: the Council of Independent Communication Suppliers (CICS), the Taxicab & Livery Communications Council (TLCC), the Telephone Maintenance Frequency Advisory Committee (TELFAC), and USMSS, Inc.

Access is a limited liability company recently formed to participate in the 700 MHz guard band auction. Spectrum Equity, Inc., a wholly owned subsidiary of ITA, is currently the sole member of Access.

In this proceeding, the Commission seeks comment on whether or not to adopt cost-sharing rules to facilitate the clearing of the 746-806 MHz bands.<sup>2</sup> The Commission tentatively concluded that marketplace forces, rather than Commission mandates, should dictate any cost sharing relationships. In reaching its tentative conclusion, the

Commission noted that (i) the number of licensees that will benefit from cost sharing rules will be small; (ii) the nature of the incumbency is so significant as to create a high incentive for new licensees to reach comprehensive cost sharing agreements; and (iii) unlike the PCS situation, all of the licensees will be known to one another at the same time.<sup>3</sup> While the Commission has tentatively concluded that it is not appropriate to adopt cost sharing rules in this proceeding, it nevertheless seeks comment on whether or not cost sharing rules would expedite the clearing of the 700 MHz band for the new licensees.<sup>4</sup>

From ITA and Access' perspectives, the Commission is faced with a challenging task with respect to clearing the spectrum under discussion. Certainly, the continued presence of the broadcast incumbents in the 700 MHz band poses a business development risk for all of the new licensees, whether they be public safety entities, guard band managers, or traditional commercial entities. Moreover, the conditions placed upon the Commission as to when and under what conditions the broadcasters must relocate is difficult, at best, and impossible, at worst. Hence, the Commission has been placed in the unfortunate position of having to balance the interests of incumbent broadcasters against the interests of the potential 700 MHz licensees. ITA and Access understand and sympathize with the dilemma facing the Commission in this proceeding.

In the past, the Commission has faced similar circumstances wherein commercial entities purchased spectrum at auction that was encumbered by distinctly different telecommunications services, *i.e.* the PCS/microwave situation. In that

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<sup>3</sup> See FNPRM at ¶ 81  
<sup>4</sup> *Id.* at ¶ 83

instance, the Commission wisely set caps on the relocation costs. As the Commission is aware, these caps significantly facilitated negotiations in the PCS/microwave clearing process by providing defined financial benefits to the incumbents and a ceiling on the risk associated with relocation for the PCS licensees. ITA and Access do not believe that the Commission should mandate cost sharing in the broadcast relocation process. Nevertheless, we do believe that the Commission should provide guidelines, if not relocation caps, for those electing to enter into voluntary negotiations and agreements.

As part of the FNPRM, the Commission also sought comment on whether the guard band manager licensees should be required to pay a portion of the clearing costs.<sup>6</sup> The challenge facing those entities genuinely interested in providing the services intended by the Commission in the guard band is daunting. Not only must they protect the incumbent broadcasters, but they must protect the adjacent public safety licensees as well. Hence, the potential for maximizing use of the guard band spectrum is that much more difficult. Consequently, the business model for the guard band is significantly different than that of the adjacent 30 MHz band.

Fortunately, for those entities legitimately interested in providing guard band manager services, relocation of the broadcast incumbents, while certainly important, does not prohibit the initiation of disaggregation of the guard band spectrum for use by private and commercial entities. Instead, through site-by-site leasing, the guard band manager can deploy systems while the spectrum is still encumbered. In sum, the guard band manager and its lessees can "share" the spectrum with the broadcasters by

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<sup>6</sup> *Id.* at ¶ 82.  
<sup>7</sup> *Id.* at 84.

coordinating around the incumbents. Given this distinction, ITA and Access believe that, if the Commission were to implement cost sharing rules, the guard band manager licensees should not be *required* to pay a share of the relocation costs. We do believe, however, that the guard band manager could in a voluntary manner, enter into negotiations with the 30 MHz licensee to pay some portion of the relocation costs.

ITA and Access support the Commission in its tentative conclusion regarding cost sharing. Moreover, since the Commission is constrained as to the nature and timing of broadcast relocation, ITA and Access suggest that the Commission let marketplace forces, rather than Commission rules, dictate the possible cost sharing negotiations and relationships.

Respectfully Submitted,

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Date: August 16, 2000

### Certificate of Service

I, Jeremy W. Denton, do hereby certify that on the 16th day of August 2000, I forwarded to the parties listed below a copy of the foregoing Comments of the Industrial Telecommunications Association, Inc. and Access Spectrum LLC by first-class mail, postage pre-paid:

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